

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Civil Action No.: 5:08-CV-00460-FL

DUKE ENERGY PROGRESS, INC.,)
)
Plaintiff,)
v.)
)
3M COMPANY, et al.,)
)
Defendants.)
)

Civil Action No.: 5:08-CV-00463-FL

CONSOLIDATION COAL COMPANY,)
)
Plaintiff,)
v.)
)
3M COMPANY, et al.,)
)
Defendants.)
)

THIRTEENTH REPORT OF SPECIAL MASTER

Pursuant to Rule 53(e) of the Federal Rules of Civil Procedure and paragraph B.5. of the Court's appointment orders of January 8, 2014 (460 DE-1387; 463 DE-1379), and as further directed pursuant to the Court's Text Order of July 19, 2016, I respectfully submit the following report for the period from July 20, 2016, through October 14, 2016. My Twelfth Report of Special Master ("Twelfth Report"), filed on July 19, 2016 (460 DE-1824; 463 DE-1815), covering the period from April 12, 2016, through July 19, 2016, reported on the continuing progress of the parties in documenting settlements reached before, during and immediately after formal

ADR settlement meetings held in September, 2015. It also reported on progress made by the plaintiffs and nearly all defendants and third-party defendants (together, “defendants”) in their negotiations with the United States that, by the submission of my Twelfth Report, had resulted in agreement on all materials terms of settlement and preparation of a nearly completed draft consent decree. The settling plaintiffs and defendants also had made substantial progress in reaching agreement on terms pursuant to which the consent decree would be implemented.

Throughout the present reporting period, I have monitored new filings and the Court’s orders. My very infrequent communications with counsel for the settling parties and the United States were pursuant to a standing authorization from Magistrate Judge Gates to engage parties in *ex parte* communications regarding settlement and directly related issues. Magistrate Judge Gates has reviewed and approved this Thirteenth Report of Special Master.

Settlement

During the reporting period, the settling plaintiffs and defendants have made substantial progress in documenting their agreements and filing corresponding stipulations of dismissal. Since my Twelfth Report, the plaintiffs and one additional defendant have agreed that their settlement would not be contingent on a final settlement with the United States. Dismissal stipulations have been filed with respect to all settlements not contingent on the plaintiffs and respective defendants entering into a final consent decree with the United States. The plaintiffs and three other settling defendants reportedly have reached final terms of agreement contingent on entry of a final consent decree with the United States. This progress was achieved without the further involvement of Magistrate Judge Gates or myself.

During the reporting period, the plaintiffs and all but five Ward defendants completed their negotiation of a comprehensive consent decree with the United States and submitted

authorized signature pages to the United States. These developments, and subsequent discussions with key representative counsel confirm that agreement also has been reached among the settling parties concerning the means by which they will satisfy the requirements of the consent decree. The United States has approved and signed the consent decree, subject to statutory and regulatory conditions relating to publication of a Federal Register notice, receipt of comments, and consideration of those comments. On September 22, 2016, the Department of Justice filed the United States' Complaint (Case 5:16-cv-00820-FL) as to 173 settling parties, filed a Notice of Lodging of Consent Decree, and lodged with the Court the Remedial Design/Remedial Action (RD/RA) Consent Decree and related appendices ("Consent Decree"). On September 28, 2016, the Department of Justice published notice of the consent decree in the Federal Register, establishing a thirty-day period for submission of public comments (see 81 Fed. Reg. 66689). As anticipated in the plaintiffs' Status Report to the Court of September 15, 2016 (460 DE-1836, 463 DE-1827), the Consent Decree contains a provision that would require the plaintiffs to give up their claims against other potentially responsible parties. Following the public comment period, the United States is likely to seek the Court's approval and entry of the Consent Decree.

Budget and Compensation

My invoice for services in July, 2016, was in the amount of \$435.00. I did not incur any reimbursable expenses in July. I have advised billing representatives that I had no reimbursable expenses in August or September, 2016, and that, because my services in those months involved very little time (.2 hours of docket review in each month), in the interest of avoiding disproportionate transaction costs I would not submit invoices for those months. To date, the total amount that I have invoiced for all reimbursable expenses and for all chargeable services is \$81,755.29. I anticipate that my invoice for services this month will not exceed \$600.00.

On October 7, 2016, billing representative counsel for the plaintiffs advised me that the defendants have not contributed to the payments of my invoices for quite some time. All of my invoices to date have been paid in full and on time. Counsel further advised me that the unpaid share of the defendants for the invoices in question is "about \$6,500.00," and that the plaintiffs will look to the defendants to pay my future invoices. Replying to representative billing counsel for the plaintiffs and defendants on October 9, 2016, I noted the Court's Text Order of January 14, 2016, which stated in connection with my fees and expenses that: "the court leaves to the parties to raise separately, if warranted, any issue concerning payments(s)." I have offered to informally assist the plaintiffs and defendants, without charge, as they work to resolve this issue.

Recommendation Concerning My Appointment

While it I do not assume that the United States will, after receipt and consideration of public comments, request that the Court approve and enter the Consent Decree, or that the Court will thereafter approve and enter the Consent Decree, the settlement efforts previously reported and reported today most likely have brought to a close need for my services as Special Master in the capacities set forth in the Court's Order of January 8, 2014. Hence, I recommend that the Court terminate my appointment, subject to the following conditions:

1. That I promptly submit to current representative counsel my invoice for services and expenses from October 1, 2016, through the effective date of the termination of my appointment.
2. That, at my expense, I maintain all records related to my service, including all time, expense and other billing records, for a period of at least two years from the effective date of the termination of my appointment.
3. That until they are destroyed, and at my expense, I maintain the confidentiality of all confidential records related to my service and in my possession or control.

4. That, until such time as the pending Consent Decree between the settling parties and the United States is approved and entered and any appeals from approval and entry are fully resolved, I make reasonable efforts to remain available to serve again as Special Master in the subject cases at the pleasure of the Court and on such terms as the Court may deem appropriate.

I renew my sincere thanks to the Court for the honor and opportunity to serve, and to the parties and their counsel for their courteous patience and constructive cooperation. Finally, I offer my sincere thanks to Magistrate Judge Gates for his steadfast, collegial, and effective leadership, efforts and guidance.

Respectfully submitted on October 19, 2016.

/s/ David O. Ledbetter
Special Master
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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ David O. Ledbetter
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